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Wednesday, August 25, 1999

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UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF CALIFORNIA

In re:

No. 98-3-1575-SCTC

Chapter 7

CANDACE PING-PING WUCHANG,

Debtor.

_____ /

CITY OF REDWOOD CITY,

Plaintiff,

A.P. No. 98-3-190-TC

vs.

CANDACE PING-PING WUCHANG,

Defendants.

_____ /

MEMORANDUM

Plaintiff seeks a determination that attorneys fees awarded against Defendant in a prior District Court action are nondis-chargeable in Defendant's bankruptcy case. The present action was tried to the court on August 3, 1999. Peggy S. Doyle appeared for Plaintiff City of Redwood City (Redwood City). Defendant Candace Ping-Ping WuChang (WuChang) appeared in pro per. Upon due consideration, I determine that the fee award is nondis-chargeable, because the conduct of WuChang that gave rise to the fee award was willful and malicious within the meaning of 11 U.S.C. § 523(a)(6).

FACTS

On April 8, 1995, Candace and Abel WuChang were evicted by the Redwood City police from real property owned by Gilberto Villareal. Villareal had suffered a stroke and apparently had agreed to allow the WuChangs to live in one-half of Villareal's duplex in exchange for personal care. Later, however, Villareal sought to evict the WuChangs from the duplex. On April 6, 1995, Villareal obtained from the San Mateo County Superior Court an order to show cause, returnable on April 27, 1995, why Candace WuChang should not be ordered to cease harassment of Gilberto Villareal. Although the court had not issued a temporary restraining order, the Redwood City police removed Candace and Abel WuChang from the duplex on April 8, 1995.

Candace and Abel WuChang submitted an administrative claim to Redwood City, alleging that police officers lost or destroyed jewelry and other personal property worth \$10,200. They sought compensatory and punitive damages totalling \$750,000. After Redwood City denied the claim, the WuChangs filed an action in the United States District Court for the Northern District of California (the District Court Action) seeking damages under 42 U.S.C. § 1983 for violation of their federal civil rights. The action was assigned to District Judge D. Lowell Jensen. Magistrate Judge Phyllis J. Hamilton was assigned to oversee discovery.

The District Court attempted to settle the case. Judge Hamilton conducted a settlement conference on October 3, 1996. Following the settlement conference, the defendants filed offers of judgment totalling \$17,321 under Fed. R. Civ. P. 68. Plaintiffs rejected that offer. The case was then set for a case management conference on December 4, 1996.

The discovery process quickly degenerated into a flurry of motions and counter motions that resulted in the dismissal of the action. The court granted the defendants' motions: (1) to compel return of documents (Pl. Exh. 7, 9, 12); (2) to strike lis pendens (Pl. Exh. 6); (3) directing Candace WuChang⁽¹⁾ to cease disruptive conduct at depositions (Pl. Exh. 7, 13); and (4) to strike irrelevant, embarrassing, and defamatory papers filed by WuChang (Pl. Exh. 5, 12). In several of the orders, the court found WuChang had violated Rule 11 (Pl. Exh. 5, 6, 11, 12). The court denied WuChang's motions for Rule 11 sanctions against defendants (Pl. Exh. 7, 12) and WuChang's motions to disqualify Judges Hamilton and Jensen (Pl. Exh. 11). Judge Hamilton finally recommended that the action be dismissed on the basis of WuChang's improper disruption of discovery (Pl. Exh. 13). Judge Jensen entered judgment for defendants,

granting both the defendants' motion for summary judgment and Judge Hamilton's recommendation for terminating sanctions (Pl. Exh. 15).⁽²⁾

Following entry of judgment in favor of Redwood City, Judge Jensen ordered the WuChangs to pay Redwood City \$25,000 for attorneys fees (the Fee Award). He noted that a prevailing defendant in a section 1983 suit may, in the discretion of the court, recover attorneys fees "where plaintiff's action, even though not brought in subjective bad faith, is frivolous, unreasonable or without foundation." He determined that a fee award against the WuChangs was appropriate under that standard.

The Court is persuaded that this is the unusual case in which prevailing defendants are entitled to recover some portion of their attorneys fees. Plaintiffs' conduct in pursuing their claims concerns the Court. In litigating this case, plaintiffs have routinely inundated the Court with numerous motions and filings and refused to cooperate with court orders despite repeated warnings regarding the consequences of such failure. See Order dated March 13, 1998. Such action caused defense counsel to respond to numerous unnecessary filings by plaintiffs.

Even more troubling, however, is the fact that plaintiffs engaged in this pattern even after defendants extended their Rule 68 offers of judgment which, combined, exceeded the amount claimed by plaintiffs. Although plaintiffs' summary judgment papers contain a measure of damages that is higher than the initial claim submitted to the City, the Rule 68 offers of judgment exceeded the amount of damages claimed by plaintiffs at the time of the offers. The Court makes the finding that plaintiffs knew or should have known that their claims were unreasonable once they rejected the Rule 68 offers of judgment and continued to pursue their claims. On this basis, the Court finds that defendants are entitled to an award of attorneys fees.

Pl. Exh. 18 at 6. Judge Jensen then carefully reviewed the fees sought, fixing the Fee Award at \$25,000 to: (1) exclude fees incurred before the WuChangs rejected the defendant's offers of judgment; (2) exclude fees incurred in work helpful to a companion case; and (3) take account of the WuChangs' poor financial condition.

Candace WuChang filed a petition under chapter 7 of the Bankruptcy Code on April 14, 1998.⁽³⁾ In the present action, Redwood City seeks a determination that WuChang's liability under the Fee Award is nondischargeable under section 523(a)(6) of the Bankruptcy Code, because WuChang's conduct that gave rise to the Fee Award was willful and malicious.⁽⁴⁾ Redwood City filed a motion for summary judgment, seeking to establish the elements of nondischargeability via the doctrine of collateral estoppel. I denied the motion, concluding that Judge Jensen's decision did not address whether WuChang's actions were willful and malicious. I did hold that the Fee Award established both the fact and amount of WuChang's liability. The matter was then set for trial on the issue of WuChang's intent.

The matter was tried to the court on August 3, 1999. Because the issue to be tried was a narrow one, and because WuChang had shown a unique propensity to waste time through

repeated and extended excursions into irrelevant issues, I limited each side to three hours of testimony.⁽⁵⁾

DISCUSSION

Section 523 of the Bankruptcy Code provides in relevant part:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt-

. . .

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

The Supreme Court recently held that section 523(a)(6) renders nondischargeable only liabilities arising from acts performed with intent to cause injury. "The word 'willful' in (a)(6) modifies the word 'injury,' indicating that nondischarge-ability takes a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury." Kawaauhau v. Geiger, 523 U.S. 57, 118 St. Ct. 974, 977 (1998)(emphasis in original). In a post-Kawaauhau decision, the Fifth Circuit held that intent to cause injury can be inferred from the nature of the act performed. "[W]e hold that an injury is 'willful and malicious' where there is either an objective substantial certainty of harm or a subjective motive to cause harm." Miller v. J.D. Abrams, Inc., 156 F.3d 598, 606 (5th Cir. 1998), cert. denied, 119 S.Ct. 1249 and 1250 (1999). Accord Caton v. Trudeau, 157 F.3d 1026, 1030 (5th Cir. 1998), cert. denied, 119 S.Ct. 1462 (1999). The Tenth Circuit Bankruptcy Appellate Panel has also held that under Kawaauhau intent to injure may be implied from the nature of the debtor's act.

Intent may be established by either direct or indirect evidence. Willful injury may be established by direct evidence of specific intent to harm a creditor or the creditor's property. Willful injury may also be established indirectly by evidence of both the debtor's knowledge of the creditor's lien rights and the debtor's knowledge that the conduct will cause particularized injury.

In re Longley, 235 B.R. 651, 657 (BAP 10th Cir. 1999)(citations omitted).

I find that WuChang intended to harm Redwood City in the acts which gave rise to the Fee Award. I infer such intent from the nature of WuChang's acts, which were clearly wrongful and substantially certain to cause harm to Redwood City. In finding that WuChang acted with intent to harm Redwood City, I make and rely upon the following subsidiary findings of fact.

(1) WuChang disobeyed court orders directing her to return certain telephone records. On February 12, 1997, Judge Hamilton granted a request for protective order barring WuChang from enforcing a subpoena seeking the billing records for six telephone numbers. On April 24, 1997, Judge Hamilton found that WuChang obtained the telephone records notwithstanding the protective order, and ordered WuChang to return those records. Pl. Exh. 7 at 13-15. The

order explained that WuChang was to do this by returning the records to Pacific Bell and by filing a declaration on or before April 28, 1997 stating that she had done so. Id. On May 7, 1997, Judge Hamilton issued an order to show cause re contempt on the basis that WuChang had not submitted the required declaration. Pl. Exh. 9. Judge Jensen found that WuChang obtained the telephone records despite the protective order, and had not returned those records or filed the required declaration as of September 1997. Pl. Exh. 12 at 6-8. In granting the defendants' motion for terminating sanctions on March 13, 1998, Judge Jensen found that WuChang still had not complied with the order requiring her to file a sworn declaration regarding the telephone records. Pl. Exh. 15 at 10-12. WuChang's failure to file a sworn declaration after repeatedly being directed to do so by the court can only be viewed as an intentional failure to obey the court's orders.

(2) WuChang disobeyed court orders governing the conduct of depositions by engaging in repeated disruptive behavior. On April 24, 1997, Judge Hamilton found that WuChang had acted improperly at prior depositions. She ordered WuChang to start all depositions on time, stop arguing with opposing counsel, ask brief, clear questions, and stop making personal attacks on counsel and witnesses. Pl. Exh. 7 at 2-10. On August 27, 1997, Judge Hamilton issued a second order. She found WuChang had violated the April 24th order, and she issued very specific directions as to how WuChang was to raise objections and respond to yes or no questions. She warned WuChang that she would recommend termination sanctions if the order was not obeyed. Pl. Exh. 13 at 5. On November 24, 1997, Judge Hamilton determined that WuChang had violated the August 27th order at WuChang's September 25th deposition by not bringing requested documents, by not following the court's specific orders regarding the manner of raising objections and answering yes or no questions, and by spending much of the three-hour deposition arguing about requested documents. Pl. Exh. 13. She found WuChang's conduct so egregious that she recommended terminating sanctions. Id. Judge Jensen found that terminating sanctions were appropriate, stating:

This Court agrees with Judge Hamilton that plaintiffs have abused and exhausted the patience of the Court, thus warranting the imposition of terminating sanctions in this case. Although involuntary dismissal is a drastic measure, and one that this Court does not impose lightly, the Court is convinced that this is the rare case deserving of such a sanction.

Pl. Exh. 15 at 15. After review of Judge Hamilton's and Judge Jensen's orders and excerpts of the transcript from WuChang's September 25th deposition, I find that WuChang willfully disobeyed Judge Hamilton's orders with the natural result that Redwood City incurred additional attorneys fees.

(3) WuChang filed repeated frivolous motions to disqualify the judges hearing the District Court Action. On May 6, 1997, WuChang filed a motion to disqualify Judge Hamilton, citing no evidence of prejudice other than the judge's rulings. Pl. Exh. 8. She filed a second motion to disqualify Judge Hamilton on August 12, 1997. Pl. Exh. 10. Judge Jensen denied the motions on October 6, 1997, holding that the allegation that Judge Hamilton repeatedly ruled against WuChang did not state a legally sufficient basis to disqualify the judge. See Liteky v. United States, 510 U.S. 551, 556 (1994). On June 3, 1998, well after she received Judge Jensen's order denying the motions to disqualify Judge Hamilton, WuChang filed a motion seeking to disqualify both Judge Jensen and Judge Hamilton. This motion also failed to cite any evidence

of bias other than the two judges' rulings and was denied. Pl. Exh. 31, 33.

(4) WuChang made unsupported personal attacks on Redwood City's counsel and witnesses. On April 17, 1997, WuChang filed a motion seeking Rule 11 sanctions charging that Redwood City witnesses and counsel had submitted perjured declarations and deposition testimony, destroyed or altered evidence, and prevented WuChang from taking discovery. Pl. Exh. 10. The court found these allegations to be completely without merit. See Pl. Exh. 12 at 11. WuChang repeated many of these allegations long after they had been rejected by the District Court. During the course of her appeal of the order dismissing the District Court Action, WuChang filed a motion in the Ninth Circuit seeking to disqualify Redwood City's counsel from participating in the appeal on the basis of the allegations of misconduct at the trial court level that had previously been rejected by the District Court. Pl. Exh. 20 at 2-4. The motion was denied.⁽⁶⁾

(5) WuChang filed a frivolous lis pendens. On January 27, 1997, Wuchang filed in the District Court two notices of pending action concerning six properties owned by the Villareal and Tarangioli families. The property owners moved to strike the lis pendens on the basis that the District Court Action, which alleged various intentional torts, did not involve a claim concerning title to the real properties in question. The court granted the motion to strike and determined that WuChang had violated Rule 11 in filing the lis pendens.

In the present case, plaintiffs' notices of lis pendens were unwarranted by existing law and legally unreasonable. California Code of Civil Procedure section 405.54 clearly states that recording a lis pendens is only proper in a case involving a claim to real property. Having drafted their own complaint, plaintiffs are well-aware of their claims against defendants and should know that none involve a claim to title of defendants' real property.

Pl. Exh. 6 at 7.⁽⁷⁾

(6) The District Court found that WuChang improperly inflated her claim for lost personal property. In the administrative claim submitted to Redwood City, which was attached to her complaint, WuChang claimed that police officers lost or destroyed personal property worth \$10,000. Pl. Exh. 1. Following a settlement conference with Judge Hamilton, the defendants filed offers of judgment under Fed. R. Civ. P. 68 totalling \$17,321. Pl. Exh. 2 & 3. In a declaration filed in response to defendants' motion for summary judgment, WuChang stated that she lost personal property worth \$40,963. Pl. Exh. 18 at 5-6. Judge Jensen found that the timing of this increase demonstrated "that plaintiffs knew or should have known that their claims were unreasonable once they rejected the Rule 68 offers of judgment and continued to pursue their claims." Id. at 6.

Together, the acts described above constitute overwhelming evidence of WuChang's intent to injure Redwood City. Wuchang's acts paint a clear picture of a person who felt herself free to use any tactic, however improper, against her opponents. She engaged in conduct at depositions so inherently disruptive and inappropriate that she must be assumed to have intended to impose upon Redwood City the unnecessary legal costs that naturally resulted from those acts. She filed several patently frivolous motions, some of these after the District Court had held similar motions to be completely without foundation. The very nature of

WuChang's frivolous motions to disqualify Redwood City's counsel and Judges Hamilton and Jensen suggests that their purpose was to visit retribution on anyone who failed to support her. That these wrongful acts were not the product of merely negligent ignorance of the rules is proved by Wuchang's vigilance enforcement of the rules against her opponents. A finding that Wuchang acted maliciously is further compelled by the indiscriminate, unrestrained personal attacks that appear throughout her papers regarding all attorneys, witnesses, and judges who failed to support her claims.

WuChang's argument at trial was that she was justified in bringing the District Court Action because the April 8, 1995 eviction was wrongful. She correctly notes that the San Mateo Superior Court had not issued a restraining order against her, but had only issued an order to show cause returnable 19 days after the eviction. This argument is unpersuasive, because WuChang was not sanctioned for filing the lawsuit. She was ordered to pay attorneys fees because of the grossly inappropriate manner in which she prosecuted the lawsuit. Judge Jensen made this very clear in the memorandum explaining the basis for the Fee Award. He also limited the award to fees incurred after the settlement conference. Similarly, I have not found that WuChang acted improperly in bringing the District Court Action. Rather, I find that she acted maliciously in her conduct at depositions, her filing of frivolous motions, and her failure to obey court orders.

CONCLUSION

WuChang's liability under the Fee Award is nondischarge- able in WuChang's chapter 7 bankruptcy pursuant to 11 U.S.C. § 523(a)(6).

Dated: _____

Thomas E. Carlson

United States Bankruptcy Judge

1. Although the action was filed by both Candace and Abel WuChang, Candace filed all motions and made all court appearances.
2. WuChang appealed the judgment. The Ninth Circuit affirmed on June 17, 1999 (Pl. Exh. 48). WuChang petitioned the Ninth Circuit for rehearing and for rehearing en banc on July 1, 1999 (Pl. Exh. 49).
3. Judge Jensen entered the Fee Award after WuChang filed her bankruptcy petition. Although the automatic stay may not have barred Judge Jensen from entering the Fee Award, because WuChang was a Plaintiff in the District Court Action, to the extent the automatic stay did apply, this court granted retroactive relief from stay on February 12, 1999 to permit entry of

the Fee Award. Pl. Exh. 44.

4. Redwood City asserted two other causes of action in the present action. The second claim for relief was voluntarily dismissed by Redwood City. The third claim for relief was dismissed for failure to state a claim upon which relief may be granted.

5. WuChang's allotted time was not charged for Redwood City's cross examination of WuChang's witnesses. Such cross examination was charged to Redwood City's time allotment.

6. Pl. Exh. 22. WuChang's Ninth Circuit motion to disqualify counsel was clearly not part of the basis for the Fee Award. I rely upon it solely to illuminate the intent behind WuChang's conduct in the District Court Action. See Fed. R. Evid. 404(b).

7. The filing of the lis pendens did not harm Redwood City and is relied upon solely to illuminate WuChang's intent regarding actions that did affect Redwood City. See Fed. R. Evid. 404(b).

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